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LAW AND FORCE IN INTERNATIONAL AFFAIRS.¹

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IT IS to-day perfectly apparent that ordeal by battle has not been eliminated from the conduct of international affairs. This is, however, not evidenced merely by the present war, but also by the willingness with which vast armaments are provided; by the general sentiments of publicists and statesmen; by the enthusiasm of the multitudes over warlike measures; and even by the blending of conservatives and radicals in behalf of measures pretended to be for defense, but which are at bottom a reversion to force as an arbiter of international differences.

It is commonly accepted that the principal reason why the reign of law is so tardy in international affairs, while in domestic affairs trial by rule has largely supplanted trial by violence, is that in the state there is one overruling sovereignty to enforce the mandates of law, while in international affairs there is no such over-lordship. This presupposes that, if there were an international organization of force, corresponding to courts, sheriffs and constables, international differences would practically be reduced to litigious routine. This conclusion ignores those fundamental conditions which alone will make such an organization effective.

In order to have a system of law among nations, whose sanction should be reason and conscience or organized consent rather than force, that is to say, before there can be a reign of law among nations without the constant threat of an appeal to arms, three things are essential: (1) there must be a body of common interests, universal desiderata, or needs which every nation recognizes; (2) there must be a basic unity of opinion among the nations to sanction this code of needs; (3) there must be an organ-

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ization for action to determine procedure and to enforce its mandates.

I. It is true that the more advanced nations (those now at war!) have, through diplomatic or other international agencies, laid down a number of principles which should guide international action. Custom and a general sense of right and wrong have contributed to this body of international law. In recent years, through conventions, treaties, etc., important additions have been made to international usage. All this is most important. It is the beginning—but only the beginning—of the substitution of reason for force in international matters.

The bulk of this law arises either out of commercial needs and attempts to deal with problems of international trade, or it deals with the conduct of nations in time of war, either as belligerents or neutrals. It plainly recognizes force as a means of settling international controversies. International thinking (international consent) has not yet come to the point of outlawing war, as municipal law has outlawed the mob. It is true that international law has dressed the mob in a uniform, submitted it to discipline under responsible officers and made an army out of the throng. It has thrust certain humane responsibilities upon it, such as care of captives, solicitation for the wounded, respect for the flag of truce, etc. So by means of international agreements, it has been attempted to mitigate the woes of war.

But such common agreements do not eliminate war, or the less stringent forms of applying force, as, for instance, the peaceful blockade. They do not declare for what purpose a nation may go to war. A nation may declare a war of aggrandizement, become an international black-guard; or a nation may be compelled to resort to force in self-defense; or in defense of a great principle, such as the inviolability of treaties. But there is no restraint put upon nations as to the causes which are deemed to be a justification for a resort to force. That, in the present war, every nation has been eager to justify itself in the

eyes of the world is an indication that a world sentiment is forming on this question. A century ago militarists cared nothing for the world's opinion.

As things are now, such international interests as have been established by law rest upon the principle of national duress. A world bully is possible under these conditions. And such a nation would not shrink from moral condemnation. The present conflict reveals how these international usages and agreements are shattered by war. We see to-day that the integrity of international law reposes in the lap of neutrals, not in the opportunism of belligerents.

II. This leads me to say that the fundamental element in substituting law for force as the sanction of international procedure is a basic unity of opinion upon which to establish such law. There must be an international comity of reason. That this has not been more fully developed is due to a number of causes. Among others I name:

1. Ethnic differences. A good deal has been said about ethnic unity as an excuse for resort to force. But ethnic homogeneity is found in only a few states and these are either small or not in the van of what is called civilization. In fact, such unity is found to-day only in savage and barbarous tribes. Ethnic bonds or instincts are paramount in savage tribes, and civilization is supposed to act as a sponge in erasing, not racial differences, but racial hatreds. Certainly the leading European nations can not claim ethnic unity. The disparity in Russia and Austria-Hungary, for instance, is extreme. The United States is an example of the sort of ethnic unity that is developing under modern systems of transportation and migration.

But, in spite of these vast admixtures of population, the tribal touch is still persistent in institutions, rather than in individuals, especially in religious and legal institutions, which are the least pliable of social institutions. Of these the religious motive is the more fervent, but the legal the more persistent. Illustrations of this will readily occur to the reader.

Yet such has been the influence of machinery and of transportation in eliminating tribal isolations, that vast alliances, world alliances, are now made between nations of the most diverse religious beliefs and legal practices.

2. There is a second obstacle to forming a conception of international obligations and duties: namely, the development of political habits. For our purpose it may be put in this way: How have the people of a given nation been taught to look upon force, as a primary or secondary inducement to obedience? Does a Teuton obey the multitudinous commands issued by his government because he is afraid or because he wishes? Does an Englishman grumble at every new governmental encroachment because he feels himself above law and entirely capable of self-regulation? What is liberty to a Celt or a Slav, or an American?

Here might be included the qualitative differences, differences in ideals of justice, of right and wrong, of fair dealing. For instance, the approach of the Roman law to the problems of communal and individual responsibility is very different from the approach of the common law. When it comes to international action the citizen applies the criterion of justice to which he is accustomed. He approaches the world problem from his own doorway.

Closely linked with these habits and ideals are the forms of government under which people have been accustomed to act. There is a difference between the attitude of the democrat toward international politics and the attitude of the member of an autocratic government. One expects democracy to be more tolerant of others and less addicted to the appeal to force. I am not sure, however, that democracies are less prone to war, except that they are based on constitutionalism and this tends to impersonalize government, and remove the personal motive of fealty, which persists as a prime stimulus to enlistment.

3. It is a unity of these historic and ethnic elements, together with certain psychological conditions, that creates

a third obstacle to international thinking. This is nationalism.

Nationalism has played the part in world development that individualism has played in social development. Two years ago we were inclined to believe that a new internationalism based on a new nationalism had arrived. The many international societies, of both practical and cultural nature, led some to think that a world habit of thought was forming. The pronunciamientos of the international socialists, not only because of their vehemence and apparent earnestness, but especially on account of the vast numbers who professed adherence to them, were evidence of the de-nationalizing of the working man. Such a recrudescence of nationalistic particularism as we now witness was then supposed impossible. In a very large sense, this is a war of nationalities for nationalism. Over and over again we hear the warring nations proclaim their interest in the right of a nation—great or small—not merely to existence, but to self-determination.

It is difficult to state what is the criterion of a nationalism which produced the tragic results we now behold. It is clearly not ethnic, nor religious; nor is it language, literature or art. It is not economic organization, for machine industry has pretty well levelled the industrial world. It is a blending of all those elements, historic, political, cultural, economic, legal, social, added to the instincts of loyalty which are suggested to the mind when it uses the phrase "my country." It combines a sense of ownership and of obligation.

This conviction and its accompanying sentiments are skilfully marshalled by the ambitions of leaders and governments. And so; a very noble power may be traduced to ignoble uses. "My country" is opposed, in suggestion at least, to "your country"; "my kaiser" to "your king"; "my rights" to "your rights." When a government can thus, under the guise of patriotism, link each citizen personally and consciously to the destiny of the nation, it possesses a potent barrier against international reasoning.

4. Add to this the further propensity of men to act less cautiously in the mass than as individuals, and you have the most immediate cause for resort to force rather than reason in the stress of international excitement. Why men act less humanely in bulk than as individuals, the psychologist must tell you. The lawyer accepts it as a fact. He knows that the individual ideal is crushed under the weight of numbers: that there is a difference between mass morality and individual morality. Self-control—which is the basis of all social order—vanishes readily in the crowd. Reason loses her appeal.

I suggest these as some of the obstacles toward forming that international reason and conviction which must precede a reign of law. There is no such binding element back of international law as is back of municipal law, because the conditions of unity are lacking. These conditions reside within the nations themselves. It must be admitted that it takes a high degree of self-control and tolerance to set aside one's own notions of national privilege and accept those of another. But that is what happens in municipal law, among individuals. It is the very foundation of legal justice. Until a group of people, more or less willingly, submit to such a common standard there can be no peace through law, but only peace through force, where each man carries a gun and defends himself—just as nations do to-day.

The history of international law illustrates the great difficulty of arriving at a common standard through national self-sacrifice. This is cogently illustrated by our American experience in arbitration matters. How much international thinking do our people put behind an arbitration treaty? Is there a background of average justice? How much give neutralizes the primary instinct of take? We who boast, in bad taste, of our love for peace, have been none too gracious in arbitral matters. We are ourselves an example of the difficulty of getting a nation into that frame of international thinking that makes international law possible.

III. The third step in the substitution of law for force in international affairs is the organization of force. Many people think this should come first. It cannot. A common conscience must precede it.

What form such an organization would take is suggested by the form of homologous organizations in the state.

(1) It would provide a court whose rules and decisions would speedily, under the sanction of nations, form a body of procedural law. The difficulties in the way of the practical organization of such a court are very great. Every nation will wish to be represented on the Bench. Every practical detail of its organization will be contested.

It has been suggested that organized physical force need not be back of such a court, that its dignity and prestige would be so great that no defeated litigant would dare disregard or disobey its mandates, for shame of public (world) condemnation. I think this is demanding a good deal of human nature. Whether the boycott would be effective is also questionable.

Force will remain, for some years, an arm of justice.

(2) So that some form of international constabulary becomes necessary. A nation that would defy the judgment of a court it has helped to set up would defy treaties, be callous to moral opinion, and amenable only to the sort of persuasion it would itself use, viz., force.

My suggestion is, then, that the appeal to law, as a substitute for the appeal to force in international matters, depends upon the existence of those conditions that make law possible: and that these conditions are not so much dependent upon an international organization as upon the spirit and attitude of the nations themselves. Once you get such a unifying impulse and such a commonalty of reason, then you will not be long in getting such an effective organization of force as will be necessary to deal with the unwilling.

This imposes upon nations the obligation to foster the international mind. I suggest that:

1. Anything that tends to create artificial distinctions between nations retards the development of international law and stimulates that sentimentalism and impulsiveness which leads to the resort to force. It encourages snap judgment and prevents that delay which is the enemy of a hasty temper.

2. Anything that, within the nation, tends to the exaltation of force over law tends to unfit a nation for international comity. Militarism, even when nourishing churches and universities at its iron breasts, is death to internationalism. A nation cannot rise into a fair ideal of international justice, above its own exaltation of violence.

That is to say, the two greatest hindrances to the international attitude are provincialism (which is often a synonym for patriotism); and the ideals of force as exemplified by militarism.

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